



LEGISLATIVE FINANCE COMMITTEE

58TH Montana Legislature

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ROSALIE BUZZAS
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EMILY STONINGTON
JON TESTER
JOE TROPILA
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MINUTES

March 11 & 12, 2004
Room 102, State Capitol
Helena, Montana

ROLL CALL

Rep. Dave Lewis
Rep. John Brueggeman
Rep. Gary Forrester
Rep. Monica Lindeen
Sen. Keith Bales
Sen. Rick Laible
Sen. Emily Stonington
Sen. Joe Tropila
Sen. Tom Zook
Clayton Schenck, Legislative Fiscal Analyst
Diane McDuffie, Committee Secretary

ABSENT

Sen. Jon Tester
Rep. Rosalie Buzzas
Rep. Dave Kasten

Call to Order (Tape 1A-001)

Representative Gary Forrester, Chair, called the 188th meeting of the Legislative Finance Committee (LFC) to order at 1:00 p.m. on Thursday, March 11, 2004. The meeting was held in Hearing Room 102 of the State Capitol, Helena, Montana.

1. Approval of Minutes for December 5, 2003 (Tape 1A-0081)

Senator Zook noted on page 3 of the minutes, the word discrepancy should be changed to discretion. **Senator Bales** moved the minutes of the December 5, 2003, meeting be approved with the correction noted above. **VOTE:** The motion carried unanimously.

Clayton Schenck introduced new staff members, Harry Freebourn, recently hired to fill the vacant analyst position and Diane McDuffie, to fill the office manager position in the Legislative Fiscal Division (LFD).

2. 2005 Biennium Budget Spending “Pressure Points” (Tape 1A-050)

Taryn Purdy, Principal Fiscal Analyst, LFD, presented a report on the 2005 Biennium Budget Spending “Pressure Points”. (Exhibit 1) The purpose of the report is to alert the LFC of potential cost overruns and areas of concern.

The agencies identified in the report are: Judiciary, Montana Law Enforcement Academy (MLEA), Department of Corrections (DOC), K-12 education, and Department of Justice (DOJ) Highway Patrol Retirement. Ms. Purdy reported that the anticipated supplemental requirement for Judiciary is between \$4.8 and \$6.8 million depending upon mitigation efforts. The MLEA state special revenue shortfall could approach \$1.1 million over the biennium. The DOC has an estimated shortfall of about \$600,000 and K-12 education will require a supplemental appropriation in the 2005 biennium of about \$7.9 million. The DOJ may see an impact on their budget due to transfer of funds into the Montana Highway Patrol Retirement Fund.

Two other areas of concern being closely studied are Medicaid expenditures and the Development Disabilities Division.

3. General Fund/Federal Funds Update: 2005 Biennium Projected (Tape 1A-214)

Terry Johnson, Principal Fiscal Analyst, LFD, presented a report on the General Fund/Federal Funds Update 2005 Biennium Projected. (Exhibit 2) Mr. Johnson’s report was divided into the following sections: 1) fiscal year 2004 revenue trends; 2) selected revenue source discussion; 3) disbursement issues; 4) general fund balance sheet; 5) expenditure reductions; and 6) a summary. He informed the LFC that based on information recorded through the end of February 2004, receipts for fiscal 2004 were \$747.5 million compared to \$685.1 million collected for the same period of fiscal 2003, which represents a 9.1 percent increase. While the growth rate is above the adjusted HJR 2 estimated rate of 5.2 percent, there are unusual events occurring between fiscal years that make this comparison misleading. Not only can statutory modifications change revenue trends, but change in general economic conditions can also skew aggregate growth trends. Total general fund revenues are expected to be \$35.4 million less than estimated by the 58th Legislature. In addition to negative revenue adjustments, general fund supplemental appropriations for public schools and district court assumption are estimated to be \$12.7 million.

State wildfire costs for the 2003 season have been revised upward to \$31.7 million. Based on the major adjustments identified, the general fund balance is expected to be \$38.7 million by the end of the 2005 biennium or \$7.5 million less than anticipated by the 58th Legislature.

Representative Lindeen asked for clarification with the State Fund transfer. Mr. Johnson explained that HB 363 authorized a transfer out of the State Fund into the general fund. There was an estimate of about \$8.1 million that would be transferred in the 2005 biennium in addition to the \$18.0 million transferred in 2003.

Tom Beck, Chief Policy Advisor, provided a response on behalf of the executive, stating they generally agree with Mr. Johnson's report for the 2005 biennium.

4. Wildfire Suppression Issues (Tape 2A-005)

2003 Fire Costs Update - Gary Hamel, Senior Fiscal Analyst, LFD, presented a report on DNRC Fire Cost Report. (Exhibit 3) His report included: 1) an updated Department of Natural Resources and Conservation (DNRC) fire cost estimate table; 2) a discussion on the use of the average fire costs as a planning tool to estimate fire cost impacts on state resources; 3) updates on FEMA, reimbursable costs, Forest Service bill, and Federal Jobs and Growth Tax Relief Reconciliation Act (JGTRRA); 4) the fire cost study group; and 5) LFC options. Mr. Hamel reported that the net cost of fire suppression in fiscal 2004 is estimated to be \$31.7 million. After \$27.4 million of JGTRRA grant money and expected reimbursements, the remaining fire cost totals \$4.3 million. Once fire costs are finalized, any remaining fire costs will likely be paid with JGTRRA funds. The estimated remaining balance of JGTRRA funding is \$5.4 million. If fire costs are in line with the 5-year average of \$7.0 million, additional general fund would be required to fund fire costs in fiscal 2005.

The DNRC Fire Funding Committee meetings have been terminated and the department will not develop any legislation to address the fire funding issues. The department will compile written comments and funding alternatives into a final report that will be provided to the LFC. Several options for the LFC to consider are: 1) continue where the DNRC Fire Funding Committee left off; 2) wait for the outcome of the LAD's performance audit; 3) wait until the next legislative

interim to direct staff to conduct it's own in-depth study of fire funding alternatives; or 4) take no action.

Bud Clinch offered comments on behalf of DNCR, generally concurring with Mr. Hamel's report. He explained in detail cost sharing with federal agencies and jurisdictional boundaries.

Senator Stonington asked Mr. Clinch what was the reason the DNRC Fire Funding Committee terminated with no results. Mr. Clinch said that none of the stakeholders were supportive of new or increased assessments to fund fire related costs.

Senator Bales asked for an update on the restoration of school trust lands that were burned. Mr. Clinch reported that the restoration and salvage of the burned state school trust lands from last fire season is almost complete and has produced about \$5.0 billion of timber revenue.

Clayton Schenck commented that the LAD performance audit will be looking at cost efficiency and fire policy. The issue of funding methodology is not being studied.

5. Capital Project Fund Potential Shortfall/Impacts Part II (Tape 2B-004)

Roger Lloyd and Cathy Duncan, Senior Fiscal Analysts, LFD, presented a report on the Capital Project Fund Potential Shortfall/Impacts Part II. (Exhibit 4) Their report explains the results of the legal analysis and offers options the committee may wish to take. Five questions were asked concerning the legality of certain aspects of the capitol land grant revenue and associated issues. Only one requires the committee attention. In fiscal 2003, DNRC diverted 27.75 percent of the revenue deposited to the trust in fiscal 2002, with \$220,255 of the amount characterized as prior year revenue. The department's practice is in violation of the statute.

Ms. Duncan, presented four options for the committee to consider for the purpose of achieving fairness in the funding of the DNRC's timber sale program and to improve the appropriation process of capitol land grant revenue in House Bill 5.

In response to a question by **Senator Zook** regarding prioritizing projects. Ms. Duncan stated that projects are not prioritized in this fund. Tom O'Connell, Administrator for the Architecture

& Engineering Division, Department of Administration, said that there are a variety of funding sources and it would be difficult to combine them and have a meaningful prioritization of projects.

Ms. Duncan also reported that the capitol steps project is being open to bid and hopefully will be complete by the end of the summer.

Senator Laible asked if there is another alternative for DNRC that meets the requirements of the statute. Ms. Duncan said that the options are only for consideration and that the committee may have other ideas on ways to correct the over diversion.

Bud Clinch, Director, DNRC, stated the department is “guilty as charged” in that the department failed to make the proper withdrawal from the trust account prior to July 25th. He also stated that the department will do whatever is appropriate to make sure that it doesn’t happen in the future. He also responded to questions from LFC members regarding the trust administration account.

Ann Bauchman, Administrator, Centralized Services Division, DNRC, provided the committee with a handout on the trust administration account distribution (Exhibit 4a). Ms. Bauchman explained the differences between the DNRC view and the LFD view. Ms. Bauchman concluded that the assessment was correct but the timing was wrong. The transfer should have been done in fiscal year 2002 but was done as a prior year adjustment in fiscal year 2003.

Mr. Lloyd responded that the handout shows that the amount transferred in fiscal year 2003 exceeded the 10 percent limit of the revenues collected in fiscal year 2002.

The committee chose not to take any action on this issue.

6. District Courts Statewide Assumption: Project Fiscal Update (Tape 3A-066)

Harry Freebourn, Associate Fiscal Analyst, LFD, presented a report on the District Courts Statewide Assumption Project. (Exhibit 5) The purpose of the report is to inform the LFC of potential cost overruns facing the Judicial Branch and to provide an update on the Public Defender Study and a potential shortfall in the collection of state special revenue funds used to pay for the Court Information Technology Program.

Mr. Freebourn reported that based on current and projected expenditures, the Judiciary predicts that it will experience approximately \$3.4 million in cost overruns during fiscal 2004. The fixed cost area of personal services is predicted to have a cost overrun of \$0.5 million and the variable costs an overrun of \$2.9 million. The Judiciary expects that it may be able to partially mitigate this overrun, however if these shortfalls are not permanently mitigated, it is reasonable to expect that they will also appear in similar magnitudes in fiscal 2005.

The Court Information Technology Program is funded with a \$10.00 surcharge imposed on certain court case filings and criminal convictions. The LFD estimates that the collection will be about \$650,000 behind budget for fiscal 2004.

Mr. Freebourn informed the LFC that the Law and Justice Committee will consider whether it should develop legislation to centralize at the state level the management of public defender services at the March 20, 2004 meeting. If the Committee decides to move forward with a state managed public defender system the state will most likely incur additional costs necessary to manage this function at the state level. LFD staff will provide updates to the LFC as that Committee's work progresses.

In response to a question from **Senator Laible** regarding the increase in caseload, Jim Oppedahl, Administrator, Supreme Court, said there is a slight increase in caseload in the district court, but 90 percent of the surcharge dollars come out of courts with limited jurisdiction. Fees raised in district court are about 10 percent of what actually goes into the surcharge.

Representative Lewis asked Mr. Oppedahl about the 10 percent increase in personal services in fiscal year 2004. Mr. Oppedahl said there were some salary increases for the county employees that became state employees and the transition of a county system to a state system may be another reason for the increase.

7. Other Reports (Tape 3B-002)

Taryn Purdy presented the budget amendments and operating plan changes. (Exhibits 6 and 7) She informed the committee that no action was required as these reports are informational only with no issues identified by LFD staff. The required reports (Exhibit 8), was also included in the LFC notebooks but not formally presented.

Friday, March 12, 2004

Roll Call

Rep. Dave Lewis
Rep. John Brueggeman
Rep. Rosalie Buzzas
Rep. Gary Forrester
Rep. Monica Lindeen
Sen. Keith Bales
Sen. Rick Laible
Sen. Jon Tester
Sen. Joe Tropila
Sen. Tom Zook
Clayton Schenck, Legislative Fiscal Analyst
Diane McDuffie, Committee Secretary

ABSENT

Sen. Emily Stonington
Rep. Dave Kasten

Call to Order (Tape 4A-004)

The 188th meeting of the Legislative Finance Committee (LFC) reconvened on Friday, March 12, 2004, and was called to order at 8:30 a.m. by **Representative Gary Forrester**, Chair, in Hearing Room 102 of the State Capitol, Helena, Montana.

8. 2007 Biennium Statewide Information Technology Plan (Tape 4A-0018)

Greg DeWitt, Senior Fiscal Analyst, LFD, provided a report on the 2007 Biennium Statewide Information Technology Plan (Exhibit 9) (Strategic Plan for Information Technology Exhibit 10) and explained the significant differences between the current plan and the updated plan.

Mr. DeWitt explained the role of the committee, the fiscal implications of the plan, and provided options to the committee for consideration. The five areas of concern regarding fiscal impacts are: 1) business planning; 2) data management; 3) personnel maintenance; 4) to outsource or use internal resources; and 5) to centralize or decentralize.

MOTION: Representative Laible moved that the LFC proceed with option 2 under Business Planning, “The committee may wish to direct staff to further evaluate the options for formalized business process reviews and report the findings and options to a future committee meeting.”

VOTE: Motion carried unanimously.

Brian Wolf, Chief Information Officer, Department of Administration, provided the committee with a handout on the IT project portfolio (Exhibit 11) and responded to questions from LFC members.

In conclusion, Brian Wolf and Greg DeWitt will work together on option 2 and report the findings and options to a future committee meeting.

9. Developmental Disabilities Program (Tape 4B-333)

Pat Gervais, Senior Fiscal Analyst, LFD, presented a report on Developmental Disabilities Program: Emerging Issues and Eastmont Status. (Exhibit 12) This report provides information on a number of significant system events that are occurring simultaneously within the development disabilities (DD) system and provides options that the LFC may wish to pursue.

In response to a question from **Representative Lewis** regarding the number of DD recipients being served in Montana versus the national average, Norm Davis, Mercer Human Resource Consulting, said that due to the federal IDEA (Individuals With Disabilities Education Act) passed in 1997), children are now eligible for services if they are diagnosed with a developmental delay rather than a developmental disability.

Senator Laible asked if there is a co-pay for individuals whose families have resources. Ms. Geravais said that there is no co-pay required and the DD system is one of the systems within the state that does not require a means testing or income criteria applied in determining eligibility services. The eligibility for services is based upon the disability.

In response to a question from **Senator Tester** regarding when the Eastmont facility will be open for treatment. Ms. Gervais said that the DOC is working on utilizing the facility but an open date is not known.

Senator Bales commented that the decision to use the facility for a treatment center is still being discussed and that Director Slaughter said a decision will be made around the first of June.

In response to a question from **Senator Bales** about the proposal to implement models of DD community services for persons with sexually offending behaviors, Jeff Sturm, Bureau Chief, DD, said there isn't a model in place to safely treat sex offenders placed in the community.

Senator Tester asked how many kids diagnosed at an early age drop out of the DD system. Mr. Davis, said that 70 percent of the people who enroll in DD in Montana come in between the ages of birth to 6 years of age and of those 70 percent 3 out of 4 stay in the system. One out of 4 leave DD and are not served by any state service.

MOTION: Representative Buzzas moved that the LFC proceed with option 1, "Request that the department provide an update on the DD system at each LFC meeting."

Senator Tester moved to include option 4, "Request that during the 2005 legislative session the Joint Appropriations Subcommittee on Health and Human Services examine issues related to the DD system including budgetary and public policy issues and bring forward recommendations for consideration by the 2005 legislature. **VOTE:** Motion carried unanimously.

10. Update on Medicaid and Medicaid Redesign (5B-126)

Lois Steinbeck, Senior Fiscal Analyst, LFD, presented an update on Medicaid and Medicaid Redesign. (Exhibit 13) Her report included information on Federal Medicaid changes and approval of the hospital provider tax (HB 481); issues related to the Governor's Health Care Advisory Council; issues related to timeliness and receipt of Medicaid projections; and two issues with options for consideration by the LFC.

ISSUE 1: Due to recent and historic litigation the legislature may wish to consider options to limit potential future liability and review eligibility criteria for Medicaid services. Currently there is no statute or DPHHS rule or policy statement that articulates the differences in eligibility for services among different disability groups.

Director Gary, DPHHS, provided comments on behalf of the department, generally concurring with Ms. Steinbeck's report.

John Chappius, Deputy Director, DPHHS, commented that the Medicaid Redesign Advisory Council disbands in early May and will provide a final report in June.

Senator Zook asked if Ms. Steinbeck would have sufficient time to review the report prior to the June LFC meeting. Ms. Steinbeck said that she could provide a presentation at the June meeting and then at the October meeting provide a staff analysis.

Senator Laible asked if there is a means testing for all people who participate in the Medicaid program and is there a co-pay. Ms. Steinbeck said that Montana has income and resources test for all eligibility groups unless it has been waived. The income and resources test is waived for children who have a developmental disability or a physical disability. There is a co-pay on all Medicaid services except for developmental disabilities.

Mr. Chappius said that co-pays don't apply to children. There is a Federal law under the EPDS (Early Periodic Diagnosis Screening) that states any medically necessary services for a child must be rendered.

MOTION: Senator Zook moved that the LFC proceed with option 3a, “The LFC specifically request that DPHHS provide as part of the Medicaid redesign effort proposed language to articulate the rational basis for providing different eligibility standards and different services among different disabled populations.” **VOTE:** Motion carried unanimously.

Senator Laible asked to include in the motion a review of the means test being used in each group and the applicability of a co-pay.

Ms. Steinbeck stated the LFD could provide that information at the next meeting.

ISSUE 2: Medicaid expenditures comprise a significant share of HB 2 expenditures and historically large supplemental appropriations have influenced the state general fund balance. The LFC has significant interest in receiving and reviewing estimates of current and prior year costs estimates. The LFC has not received regular Medicaid estimates as required by statute. The wording of the statute makes compliance and enforcement problematic.

Director Gray responded that the department is committed to looking at the process and would be happy to work with the LFD to construct their own Medicaid system.

MOTION: Senator Tester moved that the LFC proceed with option 1, “Amend the statute.” **VOTE:** Motion carried unanimously.

11. Law Enforcement Academy Funding Issues (Tape 6A-523)

Todd Younkin, Senior Fiscal Analyst, LFD, presented a report on the Law Enforcement Academy Funding Issues. (Exhibit 14) The purpose of this report is to alert the LFC to a funding shortfall at the Montana Law Enforcement Academy (MLEA) within the state special revenue fund. The MLEA fund was established by the 2003 legislature in HB 124. The MLEA receives revenues from two sources: 1) a \$10 surcharge; and 2) fees paid by course attendees. Due to the low level of surcharge collections, the account has a negative balance and if

mitigating actions are not taken, the fund will be overspent to a level at which one calendar year's worth of revenues would not cover the negative balance.

Currently, the department is working with OBPP on a plan to correct the structural imbalance. The LFC may wish to ask the department for an updated status on plans to address the MLEA shortfall and provide feedback on those plans.

Larry Fasbender, Deputy Director, Department of Justice, told the LFC that the department has \$450,000 in carry over funds that will be applied to the shortfall and the budget at the MLEA will be reduced by about \$127,000 to make up the funding for 2004. This does not address the problem for 2005 and the department will have to look for other funding sources.

Senator Tester asked if grants from the Montana Board of Crime Control (MBCC) are available. Mr. Fasbender said the department has not yet explored the possibility.

Mr. Fasbender informed the LFC that the major litigation program has about \$174,000 left in the account and the shortfall will be substantially higher than in past years.

Senator Tester requested an update at the next LFC meeting.

12. Status Reports on Other Interim Study Committees (6B-732)

The status reports on Postsecondary Education Policy and Budget Subcommittee (Exhibit 15) and Legislative Study Committee (Exhibit 16) were included in the LFC notebooks but were not formally presented.

13. Report on Analysis of State Program Priorities: Status (6B-004)

Taryn Purdy presented a report on Analysis of State Program Priorities: Status. (Exhibit 17), approved by the LFC as a work-plan item. The primary purpose of this project is to provide the legislature with the information it needs to: 1) put the budget into a more comprehensive, public policy oriented context; 2) prioritize a greater range of services based upon desired public policy; 3) understand more fully how the legislature can influence and control more areas of the budget;

and 4) make informed decisions within the context of this knowledge. Ms. Purdy responded to questions from LFC members.

14. Revenue and Expenditure Growth Analysis Project Status (6B-588)

Terry Johnson presented to the LFC a report of the work-in-progress status on the “State Government Revenue and Expenditure Growth Analysis” (Exhibit 18) project, approved by the LFC as a work-plan item. The goal of this project is to develop an understanding of the existing budget structure, and identify ways to create structural balance between revenues and expenditures. The four significant steps required to meet the stated goal are: 1) what is the growth of state expenditures and why; 2) what is the growth of state revenues and why; 3) does the state revenue structure support the existing state program structure and anticipated growth; and 4) what can the legislature do to provide a structural balance to the existing revenue/expenditure foundation of state government. Status of steps 1 and 2 are currently underway, step 3 cannot be completed until steps 1 and 2 are complete, and identification of options for step 4 is underway.

15. Committee Business (7A-378)

Mr. Schenck presented the items under committee business. (Exhibit 19) He directed the committees’ attention to the letter dated March 11, 2004 requesting an operating plan adjustment for fiscal 2004/2005.

MOTION: Representative Lewis moved that the proposed LFD operating plan change for fiscal 2004 to authorize a carryforward of \$11,185 of the reverted fiscal 2003 appropriation in accordance with 17-7-304(4), MCA, including authority to carryforward the unspent balance to fiscal 2005. **VOTE:** Motion carried unanimously.

Mr. Schenck also presented staff with longevity pins for their number of years working for the State of Montana.

Next LFC Meeting

The next meeting of the LFC will be held June 10 and 11, 2004.

Adjournment

Meeting adjourned at 4:05 p.m.

Representative Gary Forrester, Chairman

Diane McDuffie, Committee Secretary

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